

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

UNILOC 2017, LLC

Plaintiff,

v.

GOOGLE LLC,

Defendant.

Case No. 2:18-cv-00493-JRG-RSP

Case No. 2:18-cv-00497-JRG-RSP

Case No. 2:18-cv-00503-JRG-RSP

**FILED UNDER SEAL PURSUANT  
TO PROTECTIVE ORDER**

**DEFENDANT GOOGLE LLC'S MOTION  
FOR FEES AND COSTS PURSUANT TO 28 U.S.C. § 1927**

## **I. INTRODUCTION**

As explained in Google LLC’s (“Google”) motions for attorneys’ fees (the “Fee Motions”) in Case Nos. 18-cv-493, 18-cv-497, and 18-cv-503 (collectively, “Dismissed Cases”), the substantive weakness of the Dismissed Cases and the unreasonable manner in which Uniloc 2017, LLC (“Uniloc”) litigated them warrant an award of attorneys’ fees under 35 U.S.C. § 285. The Court should also hold Uniloc and its outside counsel—the Etheridge Law Firm (“Etheridge” firm)—jointly and severally liable for Google’s attorneys’ fees and expert fees under 28 U.S.C. § 1927 because [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

## **II. LEGAL STANDARD**

Counsel who “unreasonably and vexatiously” multiplies legal proceedings can be held liable for fees and costs under 28 U.S.C. § 1927. Conduct is “unreasonabl[e] and vexatious[.]” when counsel pursues a baseless claim in bad faith, for an improper motive, or with reckless disregard of the duty owed to the court. *Morrison v. Walker*, 939 F.3d 633, 637–38 (5th Cir. 2019). To “shift the entire cost of defense, the claimant must prove, by clear and convincing evidence, that every facet of the litigation was patently meritless.” *Id.* at 637 n.13 (citation omitted).

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**III. ARGUMENT**

[REDACTED]

[REDACTED] 1. *See Travelers Ins. Co. v. St. Jude Hosp. of Kenner, La., Inc.*, 38 F.3d 1414, 1417–18 (5th Cir. 1994) (finding that a court may consider other litigations to determine bad faith or improper motive). In these cases, [REDACTED]

[REDACTED]

[REDACTED]<sup>1</sup> *See* Ex. 1 at 88:24–90:1, 93:10–94:12; *see also Electronic Commc’n Techs., LLC v. ShoppersChoice.com, LLC*, -- F.3d --, No. 19-2087, 2020 WL 3551988, at \*4 (Fed. Cir. July 1, 2020) (finding a plaintiff’s pattern of repeatedly filing infringement actions to force settlements without ever taking a single case to a merits determination relevant to awarding fees). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>1</sup> [REDACTED]

<sup>2</sup> [REDACTED], on June 29, 2020, the Etheridge firm filed another 15 cases against Google on behalf of WSOU Investments LLC (“WSOU”). *See WSOU Investments LLC dba Brazos Licensing and Development v. Google LLC*, Case Nos. 20-cv-00571—585 (W.D.

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. *Morrison*, 939 F.3d at 638 (finding no dispute that the proceedings were “multiplied” where there were “repeated[] . . . filings based only on the meritless . . . claim.”) (citation omitted).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Simply put, studied “[i]gnorance is sanctionable, not bliss.” *Bhd. of*

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Tex.). [REDACTED] were among 106 cases that the Etheridge firm filed against five defendants, all in the Western District of Texas. Ex 4. [REDACTED]

[REDACTED]. Ex. 5 at Frame 846; Ex. 6 at Uniloc Common Production to Google 0010802 (Exhibit A).

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*Locomotive Eng'rs & Trainmen v. Union Pac. R.R. Co.*, 905 F.3d 537, 544 (7th Cir. 2018). And Section 1927 exists for the very purpose of deterring counsel from using a “head-in-the-sand approach” for the sole purpose of stringing out baseless litigation. *See, e.g., Fred A. Smith Lumber Co. v. Edidin*, 845 F.2d 750, 753 (7th Cir. 1988) (reversing denial of sanctions against counsel for “employing ‘the ostrich-like tactic of pretending that potentially dispositive authority against a litigant’s contention does not exist’”). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]l.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>3</sup> [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]e.

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[REDACTED]

[REDACTED] s.

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[REDACTED]

[REDACTED]  
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[REDACTED]

[REDACTED]  
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[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] t. *See, e.g., Morrison*, 939

F.3d at 638 (“An attorney acts with ‘reckless disregard’ of his duty to the court when he, without reasonable inquiry, advances a baseless claim despite clear evidence undermining his factual contentions.”); *Ratliff v. Stewart*, 508 F.3d 225, 235 (5th Cir. 2007) (finding “improper purpose” when plaintiff maintained suit without further investigation after notification that it sued the wrong defendant); *see Phonometrics, Inc. v. Westin Hotel Co.*, 350 F.3d 1242, 1247–48 (Fed. Cir. 2003) (affirming award under § 1927 because the patentee maintained suit despite a claim construction that precluded infringement); *MarcTec LLC v. Johnson & Johnson*, 664 F.3d 907,

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918 (Fed. Cir. 2012) (“[The patentee’s] proposed claim construction, which . . . was unsupported by the intrinsic record, was frivolous and supports a finding of bad faith.”).

**IV. CONCLUSION**

For the foregoing reasons, Google respectfully requests that the Court grant this motion and hold Uniloc and the Etheridge firm jointly and severally liable for Google’s reasonable attorneys’ fees and expert fees, and other non-taxable costs, in the amounts set forth in each of Google’s Fee Motions.

Dated: July 6, 2020

Respectfully submitted,

/s/ Robert Unikel with permission, by  
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**CERTIFICATE OF CONFERENCE**

The undersigned hereby certifies that counsel for Google has complied with the meet and confer requirement in Local Rule CV-7(h). The personal conference required by Local Rule CV-7(h) was conducted on July 6, 2020 via telephonic conference with the following participants: Jim Etheridge, Ryan Loveless and Travis Richins on behalf of Uniloc 2017, LLC, and Michael Jones, Patrick Clutter, Robert Unikel, Gregory Lanier, Tracy Stitt, and Nicholas Lee on behalf of Google LLC. Agreement could not be reached as to the items presented to the Court in this Motion because the parties disagree as to whether Google should be awarded fees and non-taxable costs. Discussions have conclusively ended in an impasse, leaving an open issue for the Court to resolve. This motion is opposed.

/s/ Michael E. Jones  
Michael E. Jones

**CERTIFICATE OF AUTHORIZATION TO FILE UNDER SEAL**

I hereby certify that the foregoing document and all supporting declarations and exhibits thereto are being filed under seal pursuant to the terms of the Protective Order.

/s/ Michael E. Jones  
Michael E. Jones

**CERTIFICATE OF SERVICE**

I hereby certify that all counsel of record who have consented to electronic service are being served with a copy of this document via electronic mail on July 6, 2020.

I also hereby certify that all counsel of record who have consented to electronic service are being served with a notice of filing of this document, under seal, pursuant to L.R. CV-5(a)(7) on July 6, 2020.

/s/ Michael E. Jones  
Michael E. Jones